SUPERIOR COURT OF CALIFORNIA
COUNTY OF SACRAMENTO

34-2022-80004019-CU-WM-GDS: Asian American Liberation Network, a California non-profit public benefit asscoiation vs. Sacramento Municipal Utility District
10/10/2025 Hearing on Petition for Writ of Mandate in Department 21

Tentative Ruling

The following shall constitute the Court's tentative ruling on the petition for writ of mandate, the City's motion to seal, and Petitioners' motions to seal, which are scheduled to be heard by the Court on Friday, October 10, 2025, at 10:00 a.m. in Department 21. The tentative ruling shall become the final ruling of the Court unless a party wishing to be heard so advises the clerk of this Department no later than 4:00 p.m. on the court day preceding the hearing, and further advises the clerk that such party has notified the other side of its intention to appear.

Oral argument shall be limited to no more than 20 minutes per side.

Parties requesting services of a court reporter will need to arrange for private court reporter services at their own expense, pursuant to Government Code §68086 and California Rules of Court, Rule 2.956. Requirements for requesting a court reporter are listed in the Policy for Official Reporter Pro Tempore available on the Sacramento Superior Court website at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-6a.pdf. Parties may contact Court-Approved Official Reporters Pro Tempore by utilizing the list of Court Approved Official Reporters Pro Tempore available at https://www.saccourt.ca.gov/court-reporters/docs/crtrp-13.Pdf

A Stipulation and Appointment of Official Reporter Pro Tempore (CV/E-206) is required to be signed by each party, the private court reporter, and the Judge prior to the hearing, if not using a reporter from the Court's Approved Official Reporter Pro Tempore list, Once the form is signed it must be filed with the clerk.

If a litigant has been granted a fee waiver and requests a court reporter, the party must submit a Request for Court Reporter by a Party with a Fee Waiver (CV/E-211) and it must be filed with the clerk at least 10 days prior to the hearing or at the time the proceeding is scheduled if less than 10 days away. Once approved, the clerk will forward the form to the Court Reporter's Office and an official reporter will be provided.

MOTIONS TO SEAL

Petitioners move to seal, by way of redactions, the personally identifying information contained in the documents Petitioners identify as the "Record." This information includes names, addresses, social security numbers, and similar personal identifying information of utility customers. The motions are unopposed.

The City moves to seal, by way of redactions, the personally identifying information contained in the documents the City identifies as the "City's Record." This information contains the names, addresses, and similar personal identifying information of utility customers and the

City's staff. This motion is unopposed.

Court records are presumed to be open unless confidentiality is required by law. (California Rules of Court, Rule 2.550, subd. (c).) The Court may order that a record be filed under seal "only if it expressly finds facts that establish: (1) There exists an overriding interest that overcomes the right of public access to the record; (2) The overriding interest supports sealing the record; (3) A substantial probability exists that the overriding interest will be prejudiced if the record is not sealed; (4) The proposed sealing is narrowly tailored; and (5) No less restrictive means exist to achieve the overriding interest." (*Id.* at subd. (d).) Rule 2.551 provides the procedures for seeking Court approval to file a record under seal, including the procedure for lodging the records that may be filed under seal.

Pursuant to subdivision (e), a court shall direct the sealing "of only those documents and pages, or, *if reasonably practicable, portions of those documents and pages*, that contain the material that needs to be placed under seal. All other portions of each document or page *must* be included in the public file." (*Id.*)(emphasis added.)

The Court finds Petitioners have established the elements required by Rule 2.550, subdivision (d). The Court further finds that Petitioners have redacted only those portions of the documents necessary to retain the overriding privacy interest. As such, Petitioners' motions to seal are **GRANTED**.

The Court finds the City has established the elements required by Rule 2.550, subdivision (d). The Court further finds that the City has redacted only those portions of the documents necessary to retain the overriding privacy interest. As such, the City's motion to seal is **GRANTED**.

PETITION FOR WRIT OF MANDATE

Petitioners are **admonished** that their opening brief, beginning on page 20, includes citations to "supra" with page numbers. This is not a proper citation, and does not direct the Court to the source document. These improper citations continue on pages 21-31. The Court has not considered any of these citations, as they do not direct the Court to the source document. "Once an opinion is cited in full, the first reference in any subsequent paragraph must include the case name, *supra* (to signal a prior full cite and the omission of some elements of that citation), the reporter, and the volume and page numbers." (Cal. Style Manal (4th ed. 2000) § 1.2.) Interestingly, it appears Petitioners were attempting to reference prior pages of their opening brief by using this citation format. Such practice is *not* encouraged, as it requires the Court to search for the relevant authority by turning multiple pages, rather than Petitioners undertaking to provide the proper record citations every time a factual assertion is made.

I. Factual and Procedural Background

The "records" provided by the parties in this matter are incredibly voluminous and include many facts that are not relevant to the determination that is before the Court for purposes of resolution of the petition for writ of mandate. By not including these facts in the following summary, the Court makes no determination as to whether these additional facts/arguments are relevant to Petitioners' claims for declaratory and injunctive relief.

A. Smart Meters v. Analog Meters

Respondent SMUD ("SMUD") is a not-for-profit municipal utility district headquartered in Sacramento. SMUD's service area covers approximately 900 square miles. SMUD is the only electricity provider in the Sacramento region. (PR 1316)

In 2009, SMUD began installing "smart meters" at its customers' locations. SMUD's smart meters transmit residential electricity usage to SMUD every four hours. (Burkhalter Decl., ¶ 3.) Smart meters may be "manually pinged" which can offer a snapshot of the current usage data. (Miller Decl., ¶ 6.) Real-time monitoring is not possible with SMUD's system, and the only way to get instantaneous, live meter reads is to read the meter in person. (*Ibid.*) Smart meters cannot identify what electrical devices are drawing power. (*Ibid.*)

SMUD's residential customers are permitted to opt out of using smart meters, and may instead request traditional, analog meters. (Lau Decl., ¶ 10.) Analog meters do not transmit any data directly to SMUD and do not allow remote connections. (Miller Decl., ¶ 9.) These meters require a SMUD reader employee to visit the residence, which is done every three months. (*Ibid.*) Analog meters require payment of a one-time setup fee between $127 and $147, and an ongoing monthly use fee of $14. (Lau Decl., ¶ 10.)[1]

B. Revenue Protection Unit

SMUD's Revenue Protection Unit employees analyze profile data for suspected power theft, looking for usage patterns indicative of such theft. (Miller Decl., ¶ 3.) The Revenue Protection Unit also responds to requests from law enforcement for electricity usage data. (*Ibid.*) Law enforcement makes two kinds of requests: (1) requests for information about individual SMUD customers suspected of illegal activity; and (2) requests for high usage households in a given zip code. (*Id.*, at ¶ 7.) The vast majority of requests are for meter data for specific individuals as part of an investigation. (*Id.*, at ¶ 8.) In 2024, SMUD received approximately 6,500 such requests from various law enforcement agencies and has received 3,900 such requests thus far in 2025. (*Ibid.*) SMUD received only five zip code requests in 2024, and has not received any thus far in 2025. (*Id.*, at ¶ 9.)

Petitioners do not challenge the City or SMUD's practices with respect to requests for information about individual SMUD customers. Accordingly, the Court will not detail this process.

With respect to the requests for particular zip codes, approximately every three months, the City's Cannabis Compliance and Investigations Unit (the "CCIU") submits a series of requests by zip code to SMUD, requesting a list of SMUD's residential customers and addresses using at least 2,800 kWh per month for the month prior to the request. (CR 128) The CCIU requests that SMUD filter this data by subscribers exhibiting either a 12-hour or 18- hour consumption pattern. (*Ibid.*)[2]

The document utilized to make these requests is a SMUD form entitled "Law Enforcement Customer Information Request." (CR 132) The document has preprinted the following statement, "By submitting this form, the requestor certifies their request is being made by law enforcement as part of an ongoing investigation and documents associated herewith are protected from production pursuant to Gov. C. § 7927.410."

In response to this initial request, SMUD provides the City's requestor with a list of customer names, addresses, and electrical consumption information for the month prior to the request. (CR 38-39) The City's requestor reviews the list and removes all addresses that are not located within the City of Sacramento. (CR 40) The City's requestor returns the revised list to SMUD, after which SMUD analyzes the remaining entries to remove data that does not meet the 12-hour or 18-hour consumption patterns, and returns the revised list to the City's requestor. (CR 128) The City's requestor then creates a separate spreadsheet, removing the names of the SMUD subscribers, the property owners, and the property owners' addresses (if different from the address where the electricity is used). (AR 25) The City's requestor sends this revised sheet to the CCIU sergeant, who disseminates the information to the appropriate law enforcement officers to conduct additional investigation. (AR 24-28)[3]

Petitioner Alfonso Nguyen is a homeowner in Sacramento County and a SMUD customer. In 2020, Petitioner Nguyen's home was approached by deputies from the Sacramento County Sheriff's Office based on electrical usage data provided by SMUD. (PR, 143) Petitioner Khurshid Khoja is a resident of the City of Sacramento and a SMUD customer. (PR 151) Petitioner Asian American Liberation Network alleges that it is a California non-profit benefit association, based in the Sacramento area. (Pet., ¶¶ 12-13.)

Petitioners seek a writ of mandate on the basis that the City's zip code-based requests and SMUD's subsequent disclosure of customer data violate Article I, Section 13, of the California Constitution, and Public Utilities Code section 8381. Petitioners request that the Court issue a writ of mandate commanding the City to cease requesting the subject information "in the absence of individualized reasonable suspicion of wrongdoing or a court order," and commanding SMUD

to cease sharing customer information with law enforcement "in the absence of individualized reasonable suspicion of wrongdoing or a court order."

II. Standard of Review

Code of Civil Procedure section 1085 permits the issuance of a writ of mandate "to compel the performance of an act which the law specially enjoins." The writ will lie where the petitioner has no plain, speedy and adequate alternative remedy, the respondent has a clear, present and usually ministerial duty to perform, and the petitioner has a clear, present and beneficial right to performance." (*Sacramento County Alliance of Law Enforcement v. County of Sacramento* (2007) 151 Cal.App.4th 1012, 1020.) "Two basic requirements are essential to the issuance of the writ. (1) A clear, present and usually ministerial duty upon the part of the respondent; and (2) a clear, present and beneficial right in the petitioner to the performance of that duty." (*Shamsian v. Dept. of Conservation* (2006) 136 Cal.App.4th 621, 640)(citations omitted.)

The interpretation of statutes is an issue of law on which the court exercises its independent judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.) In exercising its independent judgment, the Court is guided by certain established principles of statutory construction, which may be summarized as follows. The primary task of the court in interpreting a statute is to ascertain and effectuate the intent of the Legislature. (See, *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871.)

The starting point for the task of interpretation is the words of the statute itself, because they generally provide the most reliable indicator of legislative intent. (See, *Murphy v. Kenneth Cole Productions* (2007) 40 Cal.4th 1094, 1103.) The language used in a statute is to be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The court should give meaning to every word of a statute if possible, avoiding constructions that render any words surplus or a nullity. (See, *Reno v. Baird* (1998) 18 Cal.4th 640, 658.) Statutes should be interpreted so as to give each word some operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.)

Beyond that, the Court must consider particular statutory language in the context of the entire statutory scheme in which it appears, construing words in context, keeping in mind the nature and obvious purpose of the statute where the language appears, and harmonizing the various parts of the statutory enactment by considering particular clauses or sections in the context of the whole. (See, *People v. Whaley* (2008) 160 Cal.App.4th 779, 793.)

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III. Discussion

A. Requests for Judicial Notice

Although the existence of a document may be judicially noticeable, the truth of statements contained in the documents is not subject to judicial notice if those matters are reasonably disputable. (*Freemont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113.) While a document *may* be categorized as one for which judicial notice is permissible, there is a "precondition to the taking of judicial notice in either its mandatory or permissive form – any matter to be judicially noticed must be relevant to a material issue." (*People ex rel. Lockyer v. Shamrock Foods Co.* (2000) 24 Cal.4th 415, 422, FN 2.)

Petitioners filed a request for judicial notice concerning three documents. No objections have been filed. The Court has reviewed the documents and finds that the mere existence of documents 2 and 3 is not relevant to any material raised by this litigation. The request is **GRANTED** with respect to the California Public Utilities Commission, Decision 01-03-032, but is **DENIED** as to the remaining documents.

The City filed a request for judicial notice concerning a Sacramento City Ordinance and a City Code section. No objections have been filed, and the request is **GRANTED**.

B. Evidentiary Objections and Reply Evidence

Petitioners filed a declaration and "Supplemental Record of Evidence" on September 22, 2025, three days after filing their reply brief. This "Supplemental Record of Evidence" consists of over 400 pages of evidence. Petitioners reserved this hearing date, and this litigation has been pending for over three years. It is **highly** inappropriate for Petitioners to provide such a volume of evidence for the first time in connection with a reply brief. It is generally improper for a party to introduce any evidence for the first time on reply. (*San Diego Watercrafts, Inc. v. Wells Fargo Bank* (2002) 102 Cal.App.4th 308; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794 FN3; *Landis v. Pinkertons* (2004) 122 Cal.App.4th 985, 993.) Accordingly, the Court will not consider the newly proffered evidence.

The Court also notes that, a court generally does *not* consider points raised for the first time at oral argument or on reply "absent a showing of good cause for the failure to present them earlier." (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52.) "This rule is based on considerations of fairness – withholding a point until the closing brief deprives the opposing party of the opportunity to file a written response unless supplemental briefing is ordered." (*Ibid.*)

SMUD filed evidentiary objections to statements made/information contained in the

following declarations: 1) F. Maria Trujillo, 2) Khurshid Khoja, 3) Lee Lo, 4) Leedel A. Williams, Jr., 5) Adam Schwartz; 6) Alfonso Nguyen, 7) Brian R. Decker, and 8) Stephen Wicker. These objections are all **OVERRULED** as SMUD failed to comply with Rules of Court Rule 3.1354, providing the requisite format for written evidentiary objections. SMUD has referred to the paragraphs of each declaration for which it raises objections, but failed **entirely** to "Quote or set forth the objectionable statement or material" as detailed in the examples provided in the rule itself. The Court will not comb through the declarations to locate the objectionable material, as SMUD was required by rule to undertake such an endeavor itself.

Petitioners filed an objection to Mark Meredith's opinion regarding the "operational scope of an ongoing criminal investigation." This objection is **OVERRULED**, as the subject opinion is not an improper legal conclusion.

C. Summary of Applicable Statutory and Constitutional Provisions

Public Utilities Code section 8381

Section 8381 provides for the confidentiality of electrical consumption data, as controlled by a local publicly owned electric utility. Specifically:

> (a) For purposes of this section, "electrical consumption data" means data about a customer's electrical usage that is made available as part of an advanced metering infrastructure, and includes the name, account number, or residence of the customer.
>
> (b)(1) A local publicly owned electric utility shall not share, disclose, or otherwise make accessible to any third party a customer's electrical consumption data, except as provided in subdivision (f) or upon the consent of the customer.
>
> …
>
> (f)(3) Except as provided in subdivision (e)[4], this section shall not preclude a local publicly owned electric utility from disclosing electrical consumption data as required under state or federal law.

The Public Records Act

Effective January 1, 2023, the legislature re-codified the PRA within the Government Code. However, section 7920.100, provides that the recodification *did not*: "substantively

change the law relating to inspection of public records. The act is intended to be entirely nonsubstantive in effect. Every provision of this division and every other provision of this act, including, without limitation, every cross-reference in every provision of the act, shall be interpreted consistent with the nonsubstantive intent of the act." Accordingly, case law interpreting the PRA remains as applicable today as it did before the subject recodification. (Gov. Code § 7920.110.)

The PRA (Gov. Code §7920.00 et seq.[5]) provides that "access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state." (§ 7921.000) Public records are to be open to inspection and, "any reasonably segregable portion of a record shall be available for inspection by any person requesting the record after deletion of the portions that are exempted by law." (§ 7922.525.) "Given the strong public policy of the people's right to information concerning the people's business [], and the constitutional mandate to construe statutes limiting the right of access narrowly (Cal. Const., art. I, § 3, subd. (b)(2)), "all public records are subject to disclosure unless the Legislature has expressly provided to the contrary. [Citation.]" (*City of San Jose v. Superior Court* (2017) 2 Cal.5th 608, 617.)

Several categories of documents are exempt from PRA disclosure. However, disclosure is favored and a long line of cases directs that any exemption from disclosure must be narrowly construed. (See, e.g., *Dixon v. Superior Court* (2009) 170 Cal.App.4th 1271, 1275-1276.) Further, "[t]he agency opposing disclosure bears the burden of proving that an exemption applies." (*ACLU of N. California v. Superior Court* (2011) 202 Cal.App.4th 55, 67; accord *Golden Door Properties, LLC v. Superior Court* (2020) 53 Cal.App.5th 733, 789 ["'The entity attempting to deny access has the burden of proof' to demonstrate that the claimed exemption applies. [Citation.]".)

Inherent in the PRA is a recognition that the public's trust is fundamental to the American democratic process. "Openness in government is essential to the functioning of a democracy." *(International Federation of Professional and Technical Engineers, Local 21, ALF-CIO et al. v. Superior Court of Alameda County* (2007) 42 Cal.4th 319, 328.) "Implicit in the democratic process is the notion that government should be accountable for its actions. In order to verify accountability, individuals must have access to government files. Such access permits checks against the arbitrary exercise of official power and secrecy in the political process." (*CBS, Inc. v. Sherman Block* (1986) 42 Cal.3d 646, 651.)

At issue in this matter is section 7927.410, "Utility customers; disclosure of names, credit histories, utility usage data, home addresses, or telephone numbers":

> Nothing in this division requires the disclosure of the name, credit history, utility usage data, home address, or telephone number of a utility customer of a local agency, except that disclosure of the name, utility usage data, and the

home address of a utility customer of a local agency shall be made available upon request as follows:

(a) To an agent or authorized family member of the person to whom the information pertains.

(b) To an officer or employee of another governmental agency when necessary for the performance of its official duties.

(c) Upon court order or the request of a law enforcement agency relative to an ongoing investigation.

(d) Upon determination by the local agency that the utility customer who is the subject of the request has used utility services in a manner inconsistent with applicable local utility usage policies.

(e) Upon determination by the local agency that the utility customer who is the subject of the request is an elected or appointed official with authority to determine the utility usage policies of the local agency, provided that the home address of an appointed official shall not be disclosed without the official's consent.

(f) Upon determination by the local agency that the public interest in disclosure of the information clearly outweighs the public interest in nondisclosure.

California Constitution, Article 1, Section 13

Article 1, Section 13 provides,

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable seizures and searches may not be violated; and a warrant may not issue except on probable cause, supported by oath or affirmation, particularly describing the place to be searched and the persons and things to be seized.

D. Standing

SMUD argues that Petitioners do not have standing to bring the subject challenge as Petitioners "cite to no tangible harm attributable to SMUD," the public interest exception does not apply, and taxpayer standing does not authorize suit against SMUD.

Standing is a jurisdictional issue that "goes to the existence of a cause of action." (*Apartment Ass'n of Los Angeles County v. City of Los Angeles* (2006) 136 Cal.App.4th 119, 128.) Standing to seek a writ of mandate "ordinarily requires that a party be 'beneficially interested' (Code Civ. Proc. § 1086), i.e., have 'some special interest to be served or some particular right to be preserved or protected over and above the interest held in common with the public at large.' [Citation.]" (*People ex rel. Dept. of Conservation v. El Dorado County* (2005) 36 Cal.4th 971, 986.) "The beneficial interest must be direct and substantial." (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 165.)

There are several exceptions to the beneficial interest requirement. One such exception is "public interest standing." (*Id.*, at p. 166.) This exception applies, " 'where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty'" as it is sufficient that the petitioner is, " 'interested as a citizen in having the laws executed and the duty in question enforced.' [Citation.]" (*Ibid.*) Closely related is an exception referred to as "taxpayer standing." Code of Civil Procedure section 526a, "permits a taxpayer to bring an action to restrain or prevent an illegal expenditure of public money. No showing of special damage to a particular taxpayer is required as a requisite for bringing a taxpayer suit. [Citation.] Rather, taxpayer suits provide a general citizen remedy for controlling illegal governmental activity." (*Connerly v. State Personnel Bd.* (2001) 92 Cal.App.4th 16, 29.)

The Court finds both Petitioner Nguyen and Petitioner Khoja have standing as SMUD customers living within the City or County of Sacramento. SMUD argues that Petitioner Nguyen is not a SMUD ratepayer, however in support of this assertion, SMUD cites to Petitioner Nguyen's declaration, wherein he states that he has "owned my home in Sacramento County since 2001" and that he lives there with his mother. (PR 143) Petitioner Nguyen further declares that he and his mother "receive electricity from SMUD." SMUD has not cited to any evidence to contradict Petitioner Nguyen's assertion that he is a SMUD ratepayer and a homeowner in Sacramento County. While Petitioner Nguyen does not allege that he lives in the *City* of Sacramento, the evidence establishes that the initial zip code information provided to the City's requestor often contains the names, addresses, and electrical usage data of Sacramento County residents, as well as Sacramento City residents. Thus, Petitioner Nguyen is a SMUD ratepayer whose electrical usage information is subject to production under the zip code request procedure.

The evidence also establishes that Petitioner Khoja is a resident of the City of Sacramento and a SMUD customer. SMUD argues that Petitioner Khoja does not have standing because he "has not been subject to any search and seizure or data sharing of which Petitioners complain." SMUD does not cite to *any* evidence to establish that Petitioner Khoja's electrical usage information, including his name and address, has never been provided to the City's requestor in response to a zip code-based request. Further, as a SMUD customer living in the City of Sacramento, Petitioner Khoja clearly has a beneficial interest in protecting any privacy interest he may have in his electrical usage data from production by SMUD to the City's requestor.

SMUD has not cited any authority requiring Petitioner Khoja to wait for his data to be compromised before he may seek to halt SMUD's practice of disclosing such data pursuant to the sweeping zip code-based requests.[6]

The Court finds that Petitioner Asian American Liberation Network has not established that it has standing to bring the subject writ of mandate claims. " 'Under the doctrine of associational standing, an association that does not have standing in its own right may nevertheless have standing to bring a lawsuit on behalf of its members…Associational standing exists when: (a) [the association's] members would otherwise have standing to sue in their own right; (b) the interests [the association] seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.' [Citation.]" (*The Assn. of Deputy Dist. Attorneys v. Gascón* (2022) 79 Cal.App.5th 503, 524.) Petitioners do not argue the AALN has associational standing, and thus the Court will not undertake to engage in this analysis, sua sponte. Having found that Petitioner Khoja and Petitioner Nguyen have standing, the Court finds the issue of standing does not bar the Court's resolution of the merits of the petition.[7]

E. The City

Petitioners have not established that the City is in violation of a mandatory ministerial duty, or violates Petitioners' Constitutional rights when the City requests SMUD to undertake a search of its customers' electrical consumption data, and provide the City with those results. Petitioners have not provided the Court with *any* authority that an agency may be prohibited by a writ of mandate from making a *request* for information to a separate entity pursuant to the CPRA. The Court understands Petitioners' argument that SMUD's conduct goes beyond that of an agency response to a CPRA request, and thus SMUD's conduct should be analyzed as though SMUD is a division of the police department. However, this argument is relevant to the Court's determination as to whether SMUD is in violation of a mandatory ministerial duty or Petitioners' constitutional rights. This argument is *not* relevant to the Court's analysis with respect to the City's actions.

Petitioners have failed to identify any legal authority to support entitlement to a writ of mandate commanding the City to cease requesting the subject information "in the absence of individualized reasonable suspicion of wrongdoing or a court order."[8]

F. SMUD

Public Utilities Code section 8381

SMUD does not dispute Petitioners' contention that the data SMUD produces to the City's requestor regarding its customers' electrical consumption is "electrical consumption data"

within the meaning of Public Utilities Code section 8381. The plain language of section 8381 prohibits SMUD from disclosing customer's electrical consumption data to a third party, "except as provided in subdivision (f) or upon the consent of the customer." Thus, SMUD is prohibited from producing the subject data to the City, unless subdivision (f) applies, or the customer has consented.

SMUD argues that subdivision (f)(3) requires it to produce electrical consumption data in compliance with state law. SMUD then cites to Government Code section 7927.410, which provides that a utility customer's "name, utility usage data, and the home address of a utility customer" shall be made available "(c) upon court order or the request of a law enforcement agency relative to an ongoing investigation. SMUD argues that the form that the City requestor submits for the zip code-based requests states that the "request is being made by law enforcement as part of an ongoing investigation" and thus SMUD is required by Government Code section 7927.410 to produce the requested information.[9]

Petitioners argue that subdivision (c) requires the disclosure of electrical consumption data to law enforcement only as part of an "ongoing investigation," but that the City does not initiate an investigation until *after* it receives the subject data.

As detailed above, the language used in a statute is to be interpreted in accordance with its usual, ordinary meaning, and if there is no ambiguity in the statute, the plain meaning prevails. (See, *People v. Snook* (1997) 16 Cal.4th 1210, 1215.) The court should give meaning to every word of a statute if possible, avoiding constructions that render any words surplus or a nullity. (See, *Reno v. Baird* (1998) 18 Cal.4th 640, 658.) Statutes should be interpreted so as to give each word some operative effect. (See, *Imperial Merchant Services, Inc. v. Hunt* (2009) 47 Cal.4th 381, 390.) Given the plain language of subdivision (c), it is not enough for law enforcement to make a request for electrical consumption data. Such request must be "in relation to an ongoing investigation." To find Respondents' current practice justified under this interpretation would render this phrase meaningless, without significant effect.

In *Sacramento Television Stations v. Superior Court* (2025) 111 Cal.App.5th 984, the Third District Court of Appeal considered the meaning of "active criminal or administrative investigation" within the meaning of Government Code section 7923.625, another provision of the CPRA. The court determined that an "active investigation" was distinct from a prosecution, and thus the mere fact that a record was relevant to an ongoing prosecution did not mean that it was exempt from production due to an "active investigation." (*Id.*, at pp. 1000-1002.) In defining "ongoing," the Fourth District Court of Appeal in *Newton v. Clemons* (2003) 110 Cal.App.4th 1, cited to Webster's Ninth New Collegiate Dictionary's definition as "1: being actually in process, or 2: continuously moving forward: GROWING." (*Id.*, at p. 12)[10]

As the statutory scheme does not define "ongoing investigation," the Court may also

consider the legislative history of SB 448, which added the subject statutory provision concerning the production of utility customer information. (See *Skidgel v. California Unemployment. Ins. Appeals Bd.* (2021) 12 Cal.5th 1, 15)("if [statutory] language supports more than one reasonable construction, then we may look to intrinsic aids, including the ostensible objects to be achieved and the legislative history. [Citation.]") The initially proposed legislation would have permitted disclosure of the information "upon court order or the request of a law enforcement agency." (PR 1436-1437) The legislation was modified to permit disclosure, "upon court order or request of a law enforcement agency in relation to an ongoing investigation." The Senate Judiciary Committee noted that this provision would permit the police to "only obtain information relating to ongoing investigations." (PR 1453-1454)

The form the City's requestor submits when making a zip code-based request contains a preprinted statement that, "the requestor certifies their request is being made by law enforcement as part of an ongoing investigation…" However, this form is a form SMUD provided to the City for purposes of making electrical consumption data requests. Presentation of a request on this SMUD preprinted form cannot, carte blanche, relieve SMUD of its obligations under Public Utilities Code section 8381and Government Code section 7927.410 to *only* produce customer electrical consumption data pursuant to a law enforcement agency's request, "relative to an ongoing investigation." Especially given the evidence that SMUD and the City have an established process for responding to these zip code-based requests, which has historically occurred on regular intervals, with SMUD and the City behaving as partners rather than distinct agencies. (See, e.g. PR 1373, 1252-1254)[11]

The City argues that the term "ongoing investigation" must be construed broadly, so as to permit adequate access to public records, as access is favored under the PRA. However, this misunderstands section 7927.410, which does not actually provide a specific *exemption* of otherwise public records from disclosure, as the City argues it does. Section 7927.410 establishes that utility customer information *is not subject to the PRA except to the extent disclosure of the records falls within one of the enumerated requests*. Thus, the Court is to presume that utility customer information *is not* to be disclosed, and SMUD must establish that an enumerated exemption to this presumption applies. As the records are not inherently "public records" the Court need not construe the exemptions broadly, as it would with a traditional exemption to the assumption that all public records are open for public inspection.

The City argues that its regular zip code-based requests serve to "proactively investigate the existence of illegal cannabis grows in violation of the Sacramento City Code, chapter 8.132." (City Oppo., p. 24.) In support of this assertion, the City cites to the Declaration of Dave Peletta, who served as the Deputy Chief of Police for the Sacramento Police Department from 2017 through 2021, and currently serves as a Reserve Police Officer and retired annuitant. (CR 213) Peletta declares that in 2014, he determined that, "SMUD's electrical usage data could also potentially be an effective tool for the Sacramento Police Department to proactively investigate

illegal cannabis grows." (CR 214) Accordingly, he worked with SMUD to "create an ongoing process of requesting residential subscriber electrical consumption data from SMUD." (*Ibid.*) Peletta opines that these "investigatory efforts have consistently resulted in the early detection of offending cannabis growers. The vast majority of these violations would not have been timely detected, absent [the City's] practice of requesting electrical consumption information from SMUD." (CR 215)

Adam Green, the current Deputy Chief of Police for the Sacramento Police Department, declares that the CCIU "has been investigating the existence of cannabis grows within the City on an ongoing basis for years. This is because CCIU is continuously working to proactively identify potential suspects in violation of the City's cannabis cultivation ordinances." (CR 217) Further, Green declares that, "[o]ne of CCIU's primary tools in furtherance of its proactive investigation of illegal cannabis grows is the City's practice of requesting electrical consumption information" regarding SMUD's residential customers. (*Ibid.*)

The City also cites to Mark Meredith's expert report, wherein he opines that an "ongoing police criminal investigation is an active and continuous process in which law enforcement personnel collect, analyze, and preserve evidence related to a suspected violation of criminal law. The objective of this process is to identify suspects, establish probable cause, and develop evidentiary support for prosecution." (CR 240) Expert Meredith further cites to the International Association of Chiefs of Police's guidance that "criminal investigations involve the collection and organization of facts and information for the purpose of identifying suspects and developing evidence sufficient to support criminal charges." (*Ibid.*)

The Court finds that the City's process at issue in this matter, of regularly making requests for all residential consumer electrical data for numerous zip codes within the City of Sacramento, at the threshold of 2,800 kwh per month for the month prior to the request, on a preprinted form provided by SMUD, is not a request made pursuant to an "ongoing investigation" within the meaning of section 7927.410, subdivision (c). At the time of the request, the City is not investigating a "suspected violation of criminal law" as described by expert Mark Meredith, nor is the City attempting to identify suspects to support criminal charges of a suspected crime, as described by the Association of Chiefs of Police. Rather, the City is searching for, and attempting to gather evidence to see *if perhaps* a crime *may* have occurred, without any indicia that illegal conduct has occurred for which an investigation is required. The narrowing of the data based on 12-hour or 18-hour consumption patterns only occurs *after* the initial disclosure of consumer electrical data to the City.

The Court anticipates that there may be circumstances where the City could make a request for certain neighborhoods, or blocks of residences, pursuant to an ongoing investigation of suspected illegal conduct. However, the process of making regular requests for all customer information in numerous city zip codes, in the hopes of identifying evidence which *could*

possibly be evidence of illegal activity, without any reporting victim or other evidence to suggest that such a crime may have occurred, is *not* an ongoing investigation. What the City describes as a "proactive investigation" exceeds the disclosure permitted by section 7927.410, subdivision (c). To find otherwise would essentially eliminate the requirement of an "ongoing investigation" from subdivision (c), as the City asserts that it is *continuously* "investigating" the existence of illegal cannabis grows. Thus, the City's "proactive investigation" renders the electrical utility data of *every* resident of the City of Sacramento subject to disclosure, without any evidence to support a suspicion that an illegal cannabis grow is occurring anywhere in that particular resident's neighborhood.

The Court's finding is expressly limited to the zip code-based request process at issue in this litigation. The Court does not find that SMUD is required to regularly obtain a declaration, or other evidence supporting the assertion that a request is being made pursuant to an ongoing investigation. Rather, the Court finds that SMUD and the City have developed a relationship beyond that of utility provider and law enforcement, such that SMUD has knowledge that the City's zip code-based requests are not being made pursuant to an ongoing investigation, and SMUD knowingly discloses its customers' electrical consumption data" in violation of its obligations of confidentiality imposed by Public Utilities Code section 8381.

In light of the Court's determination that SMUD's conduct is a violation of Public Utilities Code section 8381, the Court need not address Petitioners' contentions that the same conduct is also a violation of Article 1, Section 13 of the California Constitution. (See *Facebook, Inc. v. Superior Court (Hunter)* (2018) 4 Cal.5th 1245, 1276, FN 31 ["Here we are guided by the familiar principle that we should address and resolve statutory issues prior to, and if possible, instead of constitutional questions, [Citation] and that we do not reach constitutional questions unless absolutely required to do so to dispose of the matter before us. [Citation.]")

IV. Conclusion

The petition for writ of mandate is **GRANTED** as to Count Two as detailed above, with respect to SMUD and Paul Lau. The petition is moot as to Count One, in light of the Court's ruling on Count Two. A peremptory writ shall issue commanding Respondent SMUD to take action specially enjoined by law in accordance with the Court's ruling, but nothing in the writ shall limit or control in any way the discretion legally vested in Respondent. Respondent shall make and file a return within 60 days after issuance of the writ, setting forth what has been done to comply therewith.

The petition is **DENIED** with respect to the City and Katherine Lester.

The parties shall notify the Court whether the declaratory relief claim remains outstanding, or whether the matter is resolved by this ruling, within 15 days of the date the

Court's ruling becomes final. If the declaratory relief claim remains outstanding, the Court will issue a further order transferring this matter to be handled as a general civil proceeding. If the matter has reached final conclusion, the Court will issue an order directing the preparation of a final judgment.

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In the event that this tentative ruling becomes the final ruling of the Court, in accordance with Local Rule 1.06, Petitioners' counsel is directed to prepare an order granting the petition as to SMUD, and denying it as to the City, incorporating this ruling as an exhibit to the order, and a writ of mandate; submit them to opposing counsel for approval as to form in accordance with CRC 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b).

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[1] SMUD's opposition brief argues on page five that the initial fee is $145, but on page seven states that the initial fee is $147. Paul Lau's declaration states that the initial fee is $127. Brandon Miller's declaration states that the initial fee is $145. Thus, SMUD has provided contradicting evidence as to the actual amount of the fee. For purposes of ruling on this matter, the Court assumes that the fee is somewhere between $127-$147.

[2] This consumption pattern is based on evidence that indoor marijuana cultivation typically utilizes these lighting schedules for plant growth, depending on the maturity of the plant. (CR 26, CR 234) Over the years, the City has lowered the electrical consumption threshold for the requests based on evidence that cannabis growers utilize technological advances in electrical efficiency in order to elude detection. (CR 214-215)

[3] The Court has not summarized the actions taken by law enforcement subsequent to this dissemination as such actions are not relevant to the issue before the Court, which is whether SMUD violates the law by providing electrical usage information to the CCIU, based on a request for all users within a particular zip code that meet a particular usage threshold.

[4] Subdivision (e) prohibits the disclosure to any immigration authority absent a court-ordered subpoena or judicial warrant.

[5] Further undesignated statutory references are to the Government Code.

[6] SMUD argues Petitioners cannot establish entitlement to a writ of mandate as they have access to alternative remedies. SMUD argues that Petitioners have the option of requesting an analog meter. However, SMUD does not cite to any authority to establish that a fee-based service (as SMUD admits that installation of an analog meter requires payment of $168 per year, and a one-time fee of $127) is an adequate remedy at law.

[7] For the first time on reply, in a footnote, AALN argues that its Executive Director is a SMUD customer, and therefore AALN may assert taxpayer standing. The Court will not consider any arguments made for the first time on reply.

[8] Petitioners argue that the City has a practice of requesting warrants based on the electrical consumption data received by SMUD, and that these warrants are based on inaccurate statements regarding the meaning of the electrical consumption data. The remedy for such a defect lies in the form of challenging the search warrant itself. These arguments are not relevant to the issues before the Court for purposes of this writ of mandate.

[9] Without citation to *any* evidence, SMUD also argues that it may disclose the subject information when necessary for an employee of a governmental agency for the "performance of its official duties" (subdivision (b)) and upon SMUD's determination that the customer is using the utility services "in a manner inconsistent with applicable utility usage policies" (subdivision (d)). The Court finds SMUD has failed to establish that either of these

subdivisions is relevant to the zip code-based request and response procedure detailed in this matter. SMUD admits that it is not making individual determinations that specific customers have "used utility services in a manner inconsistent with applicable local utility usage policies" prior to the initial production of customer information to the City's requestor. And SMUD's argument that representatives of the police department need this information as part of the department's "performance of its official duties" would be contrary to the plain language of subdivision (c). Such an interpretation is contrary to basic statutory interpretation, which requires the Court to give meaning to each word of a statute, without rendering any surplusage. (*See Diablo Valley College Faculty Senate v. Contra Costa Community College Dist. (2007)* 148 Cal.App.4th 1023, 1037.)

[10] The facts of *Newton v. Clemons* are not similar to those at issue in this matter. The Court only cites to this reference as an indication that the term "ongoing" does not have a clear definition in caselaw distinct from the definition provided by the dictionary.

[11] The Court does not find that SMUD must inquire as to whether there is in fact an ongoing investigation, or that the City must provide information supporting the existence of an ongoing investigation beyond so stating in a request form in *every circumstance.* The Court's determination in this matter is limited to the facts before it, which establish that SMUD is *aware* that the City makes these requests on a cyclical basis and that the requests are not part of an investigation beyond the City's general interest in enforcing marijuana laws.